IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 73 OF 2005

SHRI MINGUEL CARLOS DE MELO,BOMBAY ....Appellant
37.

Versus

SHRI XAVIER D'SA AND 2 ORS., ...Respondents

Mr. A. F. Diniz, Advocate for the appellant.

Coram:- R. M. LODHA, J.

Date:- 13th October, 2005

P.C.

Heard Mr. A. F. Diniz, the learned Counsel for the appellant.

2. I perused the Judgments of the Appeal Court as well as the Trial Court

3. The learned Counsel for the appellant submits that the sale deed dated 24.3.1892 whereby the portion was sold to Francisco Rodrigues and from whom the property devolved upon the defendants admeasured 205.40 sq. metres and, thus, it was clear that the defendants encroached upon an area of 45.60 sq. metres of land. In support of his contention, the learned Counsel for the appellant sought to place reliance upon the survey map prepared by the Directorate of Settlement and Land Records.

4. I considered the submission of the learned Counsel for the appellant.

5. The appellant is the original plaintiff and in the suit filed by him against the present respondents (original defendants), he prayed that he

be declared the owner in possession of the suit property i.e. the Survey No.81/11 of Camurlim Village. In the alternative, the plaintiff prayed that if the plaintiff is held to be not entitled to the aforesaid prayer, the area of 205.40 sq. metres be separated in Survey No.81/11 and the defendants be restrained from interfering and/or doing any work of construction in the area of 45.60 sq. metres in survey No.81/11.

6. The defendants, in their written statement, set up the case that the property under Survey No.81/11 is a separate and independent property having been sold to their ancestors vide Sale Deed dated 24.3.1892. They set up the case that they are in possession and enjoyment of entire Survey No.81/11 admeasuring 250 sq. metres and the construction done by them in the said land is after obtaining prior approval from the concerned Village Panchayat.

7. In the light of the pleadings of the parties, the principal issue for trial was whether the plaintiff has proved that he was owner in possession of the suit property bearing Survey No.81/11 or any part thereof. Both the Courts below considered the issue in the light of the evidence led by the parties and held that the plaintiff has failed to prove that he was owner in possessioin of the property under Survey No.81/11 or any part.

8. As a matter of fact, the evidence led by the plaintiff is not specific. There appears to be some discrepancy in the measurement given in the sale deed and the actual measurement of Survey No.81/11. But the fact of the matter is that the entire survey No.81/11 admeasuring 250 sq. metres is in possession of the defendants. Francisco Rodrigues purchased the property vide sale deed dated 24.3.1892 from earstwhile owners Custodio Rodrigues and his wife Mariquinha Gonsalves. The defendants inherited the said property from Francisco Rodrigues. The plaintiff miserably failed to prove that he was owner in possession of Survey No.81/11. As a matter of fact, the plaintiff set up false case that he was owner of Survey No.81/11. The findings recorded by the Courts below are based on evidence and concluded on facts.

9. No substantial question of law arises in this second appeal.

10. Second Appeal is dismissed in limine.

R. M. LODHA, J.

ssm.